

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA**

In re:)	
)	
)	CASE NO. 04-10044-BKC-RAM
ROBERTO RAUL DEL CRISTO,)	CHAPTER 13
)	
)	
Debtor.)	
)	
)	

ORDER DENYING MOTION TO REINSTATE

The Court conducted a hearing on September 14, 2004, on the Debtor's Motion for Rehearing on Order Dismissing Case and Denying Confirmation ("Motion for Rehearing") (CP# 24). The Motion seeks reconsideration of this Court's July 20, 2004 Order dismissing the case. Dismissal was based upon a finding that the Debtor had unsecured debt in excess of the debt limitation in 11 U.S.C. §109(e).

Facts

The Debtor's schedules list secured debt of \$778,802.82, unsecured priority debt of \$20,598.85, and general unsecured debt of \$117,936.03. The secured debt includes a first mortgage of \$174,406.52, on the Debtor's home, with the home valued in Schedule A at \$206,000. The remainder of the scheduled secured debt consists of tax liens held by the Internal Revenue Service ("IRS") arising from unpaid income taxes for 1995, 1996 and 1997.

In Schedule D itself, the Debtor treated \$224,024.53 of the 1997 secured IRS debt and \$186,625.59 of the 1995 Secured IRS

debt as the "unsecured portion." Moreover, the Debtor filed an Objection to the IRS Claim asserting that virtually all of the claim should be treated as unsecured. In addition, on May 21, 2004, the IRS filed an amended claim asserting an unsecured claim of \$720,474.63, a secured claim of \$3,048.50 and an unsecured priority claim of \$67,810.17.

Discussion

Section 109(e) of the Bankruptcy Code sets forth the debt limitations for eligibility under Chapter 13. On the filing date of this case, January 6, 2004, eligibility required noncontingent, liquidated, unsecured debts of less than \$290,525 and noncontingent, liquidated, secured debts of less than \$871,550. The Debtor's scheduled debt was under these limits.

The issue is whether the Court should consider the undersecured portion of the IRS debt as unsecured debt in determining eligibility. The Court did so in dismissing the case and reaffirms that view in denying the Motion for Rehearing.

There are some cases holding that the Court should not look beyond the schedules in determining eligibility. Comprehensive Accounting Corp. V. Pearson, 773 F.2d 751 (6th Cir. 1985); In re Morton, 43 B.R. 215, 219 (Bankr. E.D.N.Y. 1984). However, this Court agrees with a strong majority of courts, including several circuit courts, which have held that §506(a) applies in eligibility disputes to split claims into secured and unsecured portions. See Scovis v. Henrichsen (In re Scovis), 249 F.3d 975,

983-84 (9th Cir. 2001) (unsecured portion of undersecured debt is counted as unsecured for §109(e) eligibility purposes); Ficken v. United States (In re Ficken), 2 F.3d 299 (8th Cir. 1993); Brown & Co. Sec. Corp. V. Balbus (In re Balbus), 933 F.2d 246 (4th Cir. 1991); In re Day, 747 F.2d 405 (7th Cir. 1984); Soderlund v. Cohen (In re Sodurlund), 236 B.R. 271 (9th Cir. BAP 1999). Following the majority rule here is particularly appropriate since the Debtor's schedules clearly reveal that a substantial portion of the IRS secured debt is undersecured.

In sum, the Court properly considered the undersecured portion of the IRS secured debt as unsecured debt in determining eligibility. As such, the Debtor was well over the \$290,525 unsecured debt limit. Therefore, it is -

ORDERED that the Motion for Rehearing is denied. The case stands dismissed.

ORDERED in the Southern District of Florida this 19th day of October, 2004.

ROBERT A. MARK
Chief U.S. Bankruptcy Judge